

Appl. No. : 10/655,852
Filed : September 5, 2003

REMARKS

Claims 1-5 and 13-17 are cancelled with this amendment. Claims 6-12 remain pending. After claim cancellation, the remaining rejection is the rejection of Claims 6-11 as obvious over Cauthen in view of Eisermann, and Claim 12 as obvious over Cauthen in view of Eisermann and further in view of Alleyne. Applicant respectfully submits that there is no motivation to combine the Cauthen and Eisermann references to produce the claimed invention.

Cauthen teaches disk repair, not vertebral fusion. Thus, there would be no motivation to use bone morphogenic protein in conjunction with the device of Cauthen. Furthermore, the device of Eisermann is a mesh material, and would not be suitable for forming a seal as recited in Claim 6. The bone morphogenic protein would still be likely to migrate. In fact, migration through the mesh is required by Eisermann, because the protein is placed on or in the mesh, and needs to travel into adjacent areas to form the desired bone for successful fusion.

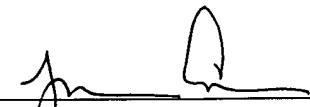
It is respectfully submitted that Claim 6 is therefore allowable over the prior art of record. Claims 7-12 depend from Claim 6, and are allowable for at least the same reasons.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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